

## STATE OF ILLINOIS

### ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company (SBC	:	
Illinois) and Metro Teleconnect	:	
Companies, Inc.	:	
	:	
Joint Petition for Approval of First	:	03-0633
Amendment to the Interconnection	:	
Agreement dated June 28, 2003,	:	
pursuant to 47 U.S.C. §252.	:	

### ORDER

By the Commission:

#### Procedural History

In this proceeding, Illinois Bell Telephone Company ("SBC Illinois") and Metro Teleconnect Companies, Inc. ("Metro") filed with the Illinois Commerce Commission ("Commission") a verified joint petition seeking the Commission's approval of the First Amendment (hereafter "First Amendment" or "Amendment"), dated June 28, 2003, to an underlying negotiated interconnection agreement ("Interconnection Agreement" or "Agreement") pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 ("TA 96"), 47 U.S.C. 151 et seq.

A copy of the First Amendment was filed with the joint petition, as was a statement in support of the joint petition from Kim Nations, "Director-Witness Negotiations for Southwestern Bell Telephone, L.P./Illinois Bell Telephone Company d/b/a SBC Illinois Negotiations and Interconnection."

Pursuant to due notice, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by respective counsel on behalf of SBC Illinois, Metro and the Commission Staff ("Staff"). The Verified Statement of A. Olusanjo Omoniyi, a Policy Analyst in the Commission's Telecommunication's Division, was admitted into the record. In his Verified Statement, Mr. Omoniyi recommended approval of the Amendment to the Agreement, subject to certain conditions regarding implementation. At the conclusion of the hearing, the record was marked "Heard and Taken." No petitions to intervene were received, and no other appearances were entered.

## **Section 252 of the Telecommunications Act of 1996**

Section 252(a)(1) of TA 96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251.

Section 252(a) of TA 96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

## **Purpose and Terms of the Amendment to the Agreement**

The First Amendment, dated June 28, 2003, amends the existing Interconnection Agreement between SBC Illinois and Metro. This amendment adds "Appendix UNE Combining" and the attachment "Schedule-UNE Combinations (Illinois)" to the Agreement. The Appendix sets forth the terms and conditions which govern the combining activities involving unbundled network elements to be performed by SBC. The Amendment provides that the terms and conditions in the Appendix shall supersede any conflicting terms and conditions contained within the existing Agreement. The Amendment further provides that it shall not modify the effective date or term of the underlying Agreement, but rather, shall be coterminous with the underlying Agreement.

### **Staff Recommendation**

Staff reviewed the Amendment to the Agreement in light of the criteria contained in Section 252(e)(2)(A) of TA 96. Under this section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection (a) if it finds that (i) the agreement, or portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or portion thereof, is not consistent with the public interest, convenience, and necessity.

With regard to the issue of discrimination, Staff's position continues to be that in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the Agreement as amended. Staff believes a carrier should be deemed to be a similarly situated carrier for purposes of this Agreement if telecommunications traffic is exchanged between it and SBC Illinois for termination on each other's networks and if it imposes costs on SBC Illinois that are no higher than costs imposed by Metro. If a similarly situated carrier is allowed to purchase the same service(s) under the same terms and conditions as provided in this contract, then Staff says this contract should not be considered discriminatory. According to Staff, since Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract, this Agreement should not be deemed discriminatory.

With regard to the public interest, convenience and necessity, Staff recommends that the Commission examine the Agreement as amended on the basis of economic efficiency, equity, past Commission orders and state and federal law. In prior dockets, Staff has taken the position that negotiated agreements should be considered economically efficient if all the services in the agreement are priced at or above their respective long run service incremental costs ("LRSICs"). According to Staff, in the instant docket, all the services in the agreement are priced at or above their respective LRSICs; therefore, the agreement should not be considered economically inefficient." Staff also states that nothing in the Agreement is inequitable, inconsistent with past Commission orders, or in violation of state or federal law.

Staff concluded that the Agreement should be approved subject to Staff's recommendations regarding implementation.

With respect to implementation of the Agreement, Staff recommended that the Commission require SBC Illinois to modify its tariffs, within five days from the date the Agreement is approved, to reference the Agreement for each service. Staff stated that this requirement is consistent with the Commission's orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. Staff recommended that such references be included in the following section of SBC Illinois' tariffs: Agreements with Telecommunications Carriers (ICC No. 16, Section 18).

In addition, Staff recommended that the Commission require SBC Illinois to file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the verified joint petition. Staff further recommended that the Commission direct the Chief Clerk to place the Agreement on the Commission's web site under "Interconnection Agreements." The Commission concludes that Staff's recommendations regarding implementation of the Agreement are reasonable and should be adopted.

### **Findings and Ordering Paragraphs**

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) SBC Illinois and Metro are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which provide telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Agreement as amended does not discriminate against a telecommunications carrier not a party to the Agreement and is not contrary to the public interest; nor is the Agreement as amended inequitable, inconsistent with past Commission orders, or in violation of state or federal law;
- (5) in order to assure that the implementation of the Agreement as amended is in the public interest, SBC Illinois should implement the Amendment by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Amendment to the Agreement is the same as the Amendment filed in this docket with the verified joint petition; the Chief Clerk should place the First Amendment on the Commission's web site under "Interconnection Agreements";
- (6) within five days of the entry of this Order, SBC Illinois should modify its tariffs to reference the Amendment to the Agreement in the manner described in the prefatory portion of this Order above;
- (7) approval of the First Amendment in this Order does not constitute approval of any future amendments referenced in or relating to the First Amendment, and does not create any presumptions with respect to issues relating thereto;

- (8) the First Amendment to the Agreement should be approved as hereinafter set forth;
- (9) approval of this Amendment to the Agreement does not have any precedential affect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Commission that the First Amendment, dated June 28, 2003, to the underlying Interconnection Agreement between SBC Illinois and Metro, is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that SBC Illinois shall comply with Findings (5) and (6) hereinabove.

IT IS FURTHER ORDERED that approval of the Amendment is subject to Finding (7) above.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 17th day of December, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman